Contents

Preface xi

Chapter 1 Introduction 1
§ 1. Four Causes of Action 1
§ 2. History and Purpose 3
§ 3. Liberal Construction 4

Chapter 2 Jurisdiction and Venue 9
§ 4. Jurisdiction 9
A. Federal 9
1. Generally 9
2. Service of Process 16
3. Due Process 17
4. Extraterritorial Application 17
5. Fiduciary Shield Doctrine 18
B. State Court Jurisdiction 19
C. Removal and Remand 20
D. Deferral Doctrines 21
1. Abstention 21
2. Exhaustion and Other Doctrines 25
E. Arbitration 26
1. Agreement to Arbitrate 26
§ 5. Venue 34
A. Generally 34
Contents

B. Section 1404(a) and *Forum Non Conveniens* 37
C. Forum Selection Clauses 39
D. Forum Shopping 41

Chapter 3  Standing 43
§ 6. Overview 43
A. Four-Factor Test 43
  1. “Person” (Plaintiff) 46
  2. Injury 48
  3. Business or Property 52
  4. “By Reason Of” 63
B. Predicate Act Standing 73
C. Abatement and Survival 77
D. Assignability and Subrogation 79
§ 7. Section 1962(a) Standing 80
§ 8. Section 1962(b) Standing 84
§ 9. Section 1962(c) Standing 87
  A. “Person” versus “Enterprise” 88
  B. “Associated With” 98
  C. “Conduct or Participate . . . in the Conduct” 101
§ 10. Section 1962(d) Standing 108

Chapter 4  Elements of Cause of Action 111
§ 11. Common Components 111
A. “Person” (Defendant) 111
B. “Enterprise” 116
  1. Structure Requirement 117
  2. Economic Motivation 120
  3. Multiple Corporations or Entities 124
  4. Legal Entities Plus Their Agents or Constituents 125
  5. Inanimate Objects 132
  6. “Enterprise” versus “Person” 132
Contents

7. “Enterprise” versus “Pattern” 132
8. Rimless Hub-and-Spoke Configuration 134
C. Racketeering Activity 136
1. Generally 136
2. State Law Offenses 140
3. Selected Predicate Acts 141
   a. Mail and Wire Fraud 141
   b. Fraud in the Sale of Securities 154
   c. Hobbs Act (Extortion) 167
4. Preempted Predicate Acts 175
5. Conspiracy as a Predicate Act 177
D. “Pattern of Racketeering Activity” 178
1. Supreme Court Precedent 179
2. Lower Court Authority 182
   a. Relatedness 184
   b. Continuity 188
   c. Patterns and Parties 198
   d. Multifactor Test 199
E. “Collection of an Unlawful Debt” 203
F. “Affect[ing] Interstate or Foreign Commerce” 207
G. Mens Rea 209
H. Extraterritorial Reach of RICO Statute 211
§ 12. Section 1962(a): Elements of Claim 220
§ 13. Section 1962(b): Elements of Claim 223
§ 14. Section 1962(c): Elements of Claim 224
§ 15. Section 1962(d): Elements of Claim 225
A. Nature of Conspiratorial Agreement 226
B. Impact of Reves’ Operation-or-Management Test on Conspiracies to Violate § 1962(c) 227
C. Intra-corporate Conspiracy Doctrine 229
### Contents

**Chapter 5**  
Imputed and Secondary Liability  
§ 16. Vicarious Liability  
§ 17. Aider and Abettor Liability

**Chapter 6**  
Relief  
§ 18. Damages  
A. Limitations on Damages  
B. Link to Predicate Damages  
C. Benefit-of-Bargain versus Out-of-Pocket Loss  
1. Lost Profits  
2. Future Damages  
D. Single-Satisfaction Rule  
§ 19. Trebled and Punitive Damages  
A. RICO Punitive Awards  
B. Common-Law Punitive Awards  
§ 20. Equitable Relief  
A. Private Injunctive Relief  
B. Injunction to Protect Damages Recovery  
C. Disgorgement, Unjust Enrichment, and Non-injunctive Equitable Remedies  
§ 21. Costs and Attorney’s Fees  
A. Costs  
B. Attorney’s Fees  
§ 22. Contribution and Indemnification

**Chapter 7**  
Pleading and Practice Issues  
§ 23. Pleading  
A. Rule 9(b): Particularity Requirements  
B. Rule 12(b)(6): Failure to State a Claim  
C. RICO Case Statements  
D. In Pari Delicto Defense  
§ 24. Summary Judgment  
§ 25. Burden of Proof  
§ 26. Sanctions
## Contents

### Chapter 8  Statutes of Limitation  309
   § 27. Duration  309
   § 28. Accrual and Equitable Tolling  310
      A. Injury Discovery Rule  312
      B. Injury/Pattern Discovery Rule  315
      C. Last Predicate Act Rule  315
      D. Analysis  316
   § 29. Expired Predicate Act Statutes  319

### Chapter 9  Res Judicata and Collateral Estoppel  321
   § 30. Generally  321
      A. Splitting  322
      B. Concurrent Jurisdiction  323
      C. Arbitration  324
      D. Bankruptcy Court  325

### Chapter 10  Constitutionality  327
   § 31. Overview  327

   § 1961. Definitions  334
   § 1962. Prohibited activities  338
   § 1963. Criminal penalties  339
   § 1964. Civil remedies  347
   § 1965. Venue and process  348
   § 1966. Expedition of actions  349
   § 1967. Evidence  349
   § 1968. Civil investigative demand  349

### Table of Cases  355

### Topical Index  xxx